SINGAPORE REPORTS.

REX v. TEO KIM CHOON.

[Orig. Crim. Juris. (Brown, J.) August 11, 1947]
[Singapore — Seventh Assizes Case No. 133 of 1947]

Penal Code, s. 494 — Bigamy — Validity of first marriage — Marriage of a Christian according to Chinese custom — Christian Marriage Ordinance (Cap. 82) — Civil Marriage Ordinance, 1940.

In this case the accused was charged with bigamy. He married his first wife in 1937 at the Hokkien Association, Kuala Lumpur, by Chinese custom. The accused was at the time of the Chinese Marriage a Christian.

Held, that by virtue of section 3 of the Christian Marriage Ordinance, which provides that any marriage solemnised otherwise than in accordance with such section shall be void, the 1937 ceremony was not a valid marriage and that the accused could not therefore be charged under s. 494 of the Penal Code.

CRIMINAL TRIAL.

Lim Koon Teck (D. P. P.) for the Crown.

A. J. Braga for the Accused.

Brown, J. : — The accused married his first wife in 1937 at the Hokkien Association Kuala Lumpur by Chinese custom. At that time there was no Civil Marriage Ordinance. The only relevant Ordinance relating to marriages, which was in force at that time, was the Christian Marriage Ordinance (Cap. 82), which has since been repealed and substituted by the Christian Marriage Ordinance, 1940. It is conceded that the accused, at the time of the Chinese marriage in 1937, was a Christian.

By section 3 of the repealed Christian Marriage Ordinance every marriage between persons, one or both of whom were Christians, had to be solemnized in accordance with section 4 of that Ordinance, and "any such marriage solemnized otherwise than in accordance with such section shall be void." Mr. Lim Koon Teck for the Crown contends that that only means void for the purposes of the Christian Marriage Ordinance, and that it does not override section 494 of the Penal Code which makes it an offence for a person to marry if such person has a husband or wife still living. In support of that contention he has referred to certain passages in *Craie's* Statute Law which state the principle that in order to alter any clearly established principle of law a distinct and positive legislative enactment is necessary. But section 3 of the repealed Christian Marriage Ordinance (Cap. 82) seems to me to be quite distinct, and I can see no reason to import into it the words "for the purposes of this Ordinance", which the section does not contain. It seems to me to be clear that, there being no Civil Marriage Ordinance in force at that time, the object of section 3 was to ensure that Christians should only be married in accordance with the procedure laid down by that Ordinance, and that a marriage performed under any other procedure, or by any racial or religious custom, should, in the case of Christians, be void.

In 1940 the Civil Marriage Ordinance was enacted and by section 5 (2) of that Ordinance "any person who has contracted a valid marriage under any law, religion, custom or usage" and who during the continuance of such marriage purports to marry under the Civil Marriage Ordinance is to be deemed to have committed the offence of bigamy. The 1937 ceremony would have been a valid marriage under Chinese custom if section 3 of the repealed Christian Marriage Ordinance had not made it void for the reason that the accused was a Christian.

I therefore rule that the 1937 ceremony was not a valid marriage.

Ruling Accordingly.

THIANG MUOI v. REX.

[App. Crim. Juris. (Brown, J.) September 2, 1947]
[Singapore — Magistrate's Appeal No. 54 of 1947]

Criminal Procedure — Statement of accused brought out in answer to question to witness — Public lottery — Expert evidence.

In this case an Inspector of Police in giving evidence was asked the question "Whose room is this?" In his answer the witness gave a reply about something which the accused had told him. The accused was undefended by Counsel. The Magistrate convicted on two grounds (1) that cash and documents were lying on the table at which the accused was sitting and (2) the Inspector's answer to the question: "Whose room is this?"

Held, that as the witness had not confined himself to answering the question and had introduced a matter which he was not being asked about, the answer was unsatisfactory and that therefore the conviction of the accused made mainly on that evidence could not be sustained.

Case referred to :—

(1) *Lee Seow Kuan v. Rex* (1940) M.L.J. 211.

MAGISTRATE'S APPEAL.

C. H. Koh for the Appellant.

Lim Koon Teck (D. P. P.) for the Respondent.

Brown, J. : — Upon the first ground which has been argued I do not think that the appellant's contention can succeed. An examination of the evidence of Foo Ah See and Exhibit which he put in seems to me to shew that *Chap Ji Kee* is a game

whereby money is distributed by chance, although I think it would be far better if witnesses who give expert evidence of this would have regard to the wording of the definition of "Lottery" in section 2 of the Ordinance. But the evidence in this case appears to me to give more information upon this crucial point than was the case in *Lee Seow Kuan v. Rex*[1].

Upon the second point that the evidence of the confession ought not to have been admitted there does not seem to have been any evidence that the accused was in custody at the time he is alleged to have made it to a police officer who was not below the rank of Inspector. Therefore I do not think that it was inadmissible. But the manner in which it came out from an officer with the experience of Inspector Suppiah in answer to a question by an undefended man was unsatisfactory. He was asked the question whose room is this? He elects to give a reply about something which the accused had told him. He did not confine himself to answering the question, and introduced a matter which he was not being asked about.

Thirdly upon the question of the insufficiency of evidence, the learned Magistrate convicted on two grounds :—

(1) The evidence that cash and documents were lying on the table at which the appellant was sitting;

(2) The Inspector's answer to the question: "Whose room is this?"

As to the first the evidence shews that No. 2 accused, who was admittedly the man who was the 'collector', was also sitting at that table. Therefore this ground amounts to nothing. There remains only the Inspector's unsatisfactory answer to the question. I do not consider that this conviction can be sustained on that. The appeal is allowed.

Appeal Allowed.

SOH PENG THIAM & ORS. v. REX.

[App. Crim. Juris. (Brown, J.) November 27, 1947]
[Singapore — Magistrate's Appeal No. 94 of 1947]

Evidence Ordinance, S. 25 — Confession to a Police Officer — Whether statement amounts to confession — Inadmissibility of evidence — No failure of justice — Evidence Ordinance, s. 168 — Criminal Procedure Code, s. 448·(e).

In this case a police witness in giving evidence said that he asked the persons on board a sampan where they got the sugar from. He then went on to say "I was told in reply that the sugar on board the motor-sampan was purchased from the lighter".

Held, (1) that as this statement led to the inference that the appellants were guilty of the offence for which they were charged, it amounted to a confession and ought to have been excluded; (2) that as the statement did not operate on the Magistrate's mind and there was other independent evidence against the appellants, the improper admission of the statement did not occasion a failure of justice.

Case referred to :—

(1) *Sambu v. Rex* (1947) M.L.J. 16.

MAGISTRATE'S APPEAL.

R. H. Green for the Appellants.

Lim Koon Teck (D. P. P.) for the Respondent.

Brown, J. : — The substantial ground in this appeal is that the Magistrate admitted two pieces of evidence which, it is said, were inadmissible as being confessions made to a police officer below the rank of Inspector and therefore contravened section 25 of the Evidence Ordinance. The first piece of evidence appears at page 2 of the Record in the cross-examination of the first police witness, who said that he asked the persons on board the sampan where they got the sugar from. He then went on to say :—

> I was told in reply that the sugar on board the motor sampan was purchased from the lighter.

The second piece of evidence, to which objection is taken, appears on page 8 of the Record in cross-examination of the 11th police witness. He said :—

> I asked Taikong why sugar unloaded at night time. Taikong said — as I am in trouble. I wish to sell the sugar.

Dealing first with this piece of evidence on page 8, there were six accused persons in this case, of whom Accused 4, 5 and 6 are the 1st, 2nd and 3rd appellants respectively. The first appellant was the owner of the motor-sampan, and the 2nd and 3rd appellants were coolies employed by him. The Taikong, whose statement is referred to by the 11th witness was the Taikong of the lighter. He was the 1st Accused at the trial and is not an appellant. That would appear to dispose of this objection.

With regard to the first piece of evidence (on page 2) the question is whether it amounts to a confession. And the following passage from page 226 of the 9th Edition of *Woodroffe and Ameer Ali's* Law of Evidence is directly in point :—

> A confession is an admission made at any time by a person charged with a crime stating, or suggesting the inference, that he committed the crime. Therefore not only statements which amount to a direct acknowledgment of guilt are confessions, but also inculpatory statements, which, although they fall short of actual admissions of guilt yet suggest an inference of guilt. Ali inculpatory statements, however, are not "confessions", but only such as fall short of being an admission of guilt, and from which an inference of guilt follows. A statement